

I ask unanimous consent to print the list of cases to which I referred in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### LEADING CASES TED OLSON ARGUED

Ted Olson has argued or been the counsel of record in some of the leading cases before the Supreme Court:

*Rice v. Cayetano* (2000)—Counsel of record for the prevailing party in this case in which the Court struck down as a violation of the Fifteenth Amendment. Hawaiian legislation restricting voting in certain elections to citizens based on racial classifications.

*U.S. v. Commonwealth of Virginia* (1996)—Whether Virginia Military Institute male-only admissions policy violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Mr. Olson was counsel of record for the Commonwealth of Virginia and Virginia Military Institute.

*Garcia v. San Antonio Metropolitan Transit Authority* (1985)—Whether the Tenth Amendment's reservation of powers to the states precluded application of the minimum wage and other employment standards of the Federal Fair Labor Standards Act to wages paid by the City of San Antonio to municipal transit workers. Mr. Olson was counsel of record for the United States.

*Immigration and Naturalization Service v. Chadha* (1983)—Striking down as unconstitutional legislative veto devices by which Congress reserved to itself or some component of Congress the power to reverse or alter Executive Branch actions without enacting substantive legislation. Mr. Olson was counsel on the briefs for the United States.

#### OTHER LEADING CASES

*Hopwood v. Texas* (5th Circuit)—Holding that University of Texas School of Law admissions policies violate Fourteenth Amendment to the Constitution of the United States. Mr. Olson is counsel of record for students denied admission under law school admission policy which discriminated on the basis of race and ethnicity.

*In Re Oliver L. North* (D.C. Circuit)—Attorneys fee awarded to former President Ronald Reagan in connection with Iran-Contra investigation. Mr. Olson represented former President Ronald Reagan in connection with all aspects of Iran-Contra investigation including fee application.

*Wilson v. Eu* (California Supreme Court)—Upholding California's 1990 decennial reapportionment and redistricting of its congressional and legislative districts. Mr. Olson was counsel to California Governor Pete Wilson.

Mr. NICKLES. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, is it in order for me to speak now on a matter not connected with this nomination?

The PRESIDING OFFICER. It would take unanimous consent.

Mr. STEVENS. I ask unanimous consent to speak for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. STEVENS are located in today's RECORD under "Morning Business.")

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALLARD). Without objection, it is so ordered.

#### UNANIMOUS CONSENT AGREEMENT

Mr. HATCH. Mr. President, I ask unanimous consent that all time be yielded back on the motion and the motion be agreed to. I further ask consent that the Senate now proceed to the consideration of the nomination and that the vote occur on the confirmation of the nomination with no intervening action or debate. I also ask unanimous consent that following the vote on the confirmation of the Olson nomination, the Senate then proceed to two additional votes, the first vote on the confirmation of Calendar No. 83, Viet Dinh, to be followed by a vote on the confirmation of Calendar No. 84, Michael Chertoff. Finally, I ask consent that following those votes, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. So I understand, the first vote would be on the Olson nomination immediately?

Mr. HATCH. That is correct.

Mr. LEAHY. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The motion was agreed to.

Mr. HATCH. For the information of all Senators, under this agreement, there will be three consecutive rollcall votes on these nominations.

I ask for the yeas and nays on the Olson nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. I ask unanimous consent it be in order for me to ask for the yeas and nays on the other two votes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. I ask for the yeas and nays on those votes.

Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

NOMINATION OF THEODORE BEVRY OLSON, OF THE DISTRICT OF COLUMBIA, TO BE SOLICITOR GENERAL OF THE UNITED STATES

The PRESIDING OFFICER. Under the previous order, the clerk will report the nomination.

The assistant legislative clerk read the nomination of Theodore Bevry Olson, of the District of Columbia, to be Solicitor General of the United States.

Mr. WARNER. Mr. President, I rise today in support of the nomination of a Virginian, Theodore "Ted" Olson, to serve as the Solicitor General of the United States.

Article II, Section 2 of the Constitution provides that the President:

shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the Supreme Court, and all other Officers of the United States. . . .

Thus, the Constitution provides a role for both the President and the Senate in this process. The President has the power to nominate, and the Senate has the power to render advice and consent on the nomination.

In fulfilling the constitutional role of the Senate, I have, throughout my career, tried to give fair and objective consideration to both Republican and Democratic Presidential nominees at all levels.

It has always been my policy to review nominees to ensure that the nominee has the qualifications necessary to perform the job, to ensure that the nominee will enforce the laws of the land, and to ensure that the nominee possesses the level of integrity, character, and honesty that the American people deserve and expect from public office holders.

Having considered these factors, I have come to the conclusion that Ted Olson is fully qualified to serve as our great Nation's next Solicitor General.

The Solicitor General's Office supervises and conducts all Government litigation in the U.S. Supreme Court. The Solicitor General helps develop the Government's positions on cases and personally argues many of the most significant cases before the Supreme Court.

Given these great responsibilities, it is no surprise that the Solicitor General is the only officer of the United States required by statute to be "learned in the law."

Mr. Olson's background in the law is impressive. He received his law degree in 1965 from the University of California at Berkeley where he was a member of the California Law Review and graduated Order of the Coif.

Upon graduation, Mr. Olson joined the firm of Gibson, Dunn, & Crutcher in 1965, becoming a partner in 1972. During this time, Mr. Olson had a general trial and appellate practice as well as a constitutional law practice.

In 1981, Mr. Olson was appointed by President Reagan to serve as Assistant

Attorney General, Office of Legal Counsel in the U.S. Department of Justice. During his 4 years in this position, Mr. Olson provided counsel to the President, Attorney General, and heads of the executive branch departments.

After serving in the Reagan administration, Mr. Olson returned to private practice. He has argued numerous cases before the Supreme Court, including one that we are all familiar with related to this past election and the Florida election results. His vast experience in litigating before the Supreme Court will serve him well as Solicitor General.

Based on this extensive experience in the law, it goes without saying that Mr. Olson is "learned in the law." Mr. Olson is obviously extremely well-qualified to serve as our next Solicitor General.

Mr. THURMOND. Mr. President, I am very pleased to support Mr. Ted Olson today to be Solicitor General.

Mr. Olson is one of the most qualified people ever nominated for this position. He has had an extensive and impressive legal career, specializing in appellate law. He has argued many cases of great significance in the Federal courts, including 15 cases before the U.S. Supreme Court. He also has written extensively and testified before the Congress on a wide variety of legal issues.

In addition, he served admirably as Assistant Attorney General in the Office of Legal Counsel under President Reagan. He provided expert, non-partisan advice based on the law. I am confident he will do the same as Solicitor General. For example, he has assured the Judiciary Committee that he will defend laws of Congress as long as there is any reasonable argument to support them.

Over the years, he has earned a distinguished reputation in the legal community. In fact, he has been endorsed for this position by a wide variety of people in the profession, including Harvard Law Professor Laurence Tribe.

Mr. Olson is a decent, honorable man, and a person of high character and integrity. He is one of the most capable and distinguished attorneys practicing law today.

Many allegations have been raised about Mr. Olson, but there is no merit to these charges. The fact that allegations are raised does not mean they are true or that they have any significance. Based on reservations raised by Democrats, the Judiciary Committee has closely reviewed these matters. Throughout the process, Mr. Olson has been very cooperative and straightforward with the committee. It is true that he wrote in the *American Spectator* about the scandals of the Clinton administration, and spoke with people involved with the magazine about these matters. After all, the Clintons were a major focus of the magazine, and there were many scandals to report about. This does not mean that Mr. Olson misled the committee about his

knowledge of the Arkansas Project or anything else. There is nothing to show that he has done anything wrong, and there is no reason to keep searching.

The Washington Post, which is the primary newspaper in which the allegations were raised and is not known for conservative editorials, concluded that Mr. Olson should be confirmed. It stated that "there's no evidence that his testimony was inaccurate in any significant way."

As chairman of the Constitution Subcommittee, I know that the Justice Department needs the Solicitor General to be confirmed as soon as possible. The representative for the United States to the Supreme Court is an extremely important position that has been vacant for months. For the sake of justice, it is critical that the Senate acts on this nomination.

I urge my colleagues to support Mr. Olson today. He deserves our support. I recognize that members have the right to vote against a nominee for any reason. But, if they do, I firmly believe they will be voting against one of the finest and most able men we have ever considered for Solicitor General.

Mr. FEINGOLD. Mr. President, I have so far voted for all of President Bush's nominees for positions in the Department of Justice and other executive branch departments. As I have explained before, I believe that the President's choices for executive positions are due great deference by the Senate. I am very reluctant to vote against a qualified nominee for such a position. I have been criticized for some of my votes on this President's nominations, including my vote for Attorney General Ashcroft, and I'm sure I will take criticism for some of my votes in the future.

But, I have never said I will vote for every executive branch nominee, and today I must vote "No" on the nomination of Theodore Olson to be Solicitor General of the United States.

I am disappointed that the Senate is moving so quickly to a vote on this nomination. I believe that serious questions exist about Mr. Olson's candor in his testimony before the Senate Judiciary Committee. Although there has been some further inquiry about these matters in the past week, after the Judiciary Committee voted 9-9 on Mr. Olson's nomination, the Senate has not had time to review and digest even the limited additional information that the inquiry uncovered. Without further time to resolve the questions that our committee's work has raised, I cannot in good conscience vote for Mr. Olson.

Simply put, I am concerned that Mr. Olson was not adequately forthcoming in his testimony before the Judiciary Committee particularly on the issue of his involvement with the so-called "Arkansas Project," which was an effort to unearth scandals involving former President Clinton and his wife, undertaken by the *American Spectator* magazine with funding from Richard Mel-

lon Scaife. Let me emphasize that I am not alleging that Mr. Olson committed perjury or told an out and out lie. But it seems to me that Mr. Olson was attempting to minimize his participation in the Arkansas Project and portray it in the least objectionable light to those of us on the Democratic side, rather than simply answering the questions forthrightly and completely. As the dispute developed, Mr. Olson's supporters have gone to great lengths to argue that he answered truthfully when he said: "I was not involved in the project in its origin or its management." But Senator LEAHY did not ask if he was involved in the origin or management of the Arkansas Project. He asked: "Were you involved in the so-called Arkansas Project at any time?" Mr. Olson was not adequately forthcoming in his answer to that question.

The Solicitor General of the United States is an extremely important position in our government. It is not only the third ranking official in the Justice Department, it is the representative of the executive branch before the Supreme Court of the United States. I want the person in that position to be not just technically accurate and truthful in answering the questions of the Justices, but to be forthcoming. I want the Solicitor General to answer the Justices' questions not as a hostile witness would, narrowly responding only to the question asked and revealing as little information as possible, but as a trusted colleague would, trying to give as much relevant information as possible in response not only to the question as framed, but to the substance of the question that the Justice might have been asking, but might not have precisely articulated.

That is also how I want nominees before Senate committees to answer questions. Our questions at nominations hearings are not a game of "gotcha." We are not trying to trap nominees. We are attempting to elicit information that is relevant to our decision as to whether a nominee should serve in the office to which he or she has been nominated. We deserve forthcoming and complete answers, not just technically truthful answers. We shouldn't have to frame our questions so precisely as to preclude an evasive or disingenuous answer. We are not in a court of law. We don't ask leading questions of nominees in order to pin them down to "yes" or "no" answers. We want and expect nominees to give us complete and open answers, to put on the record all the information they have at their disposal that will help us exercise our constitutional duty to advise and consent.

Many Senators were concerned about Mr. Olson's highly partisan writings about the previous Administration, and particularly about the Department of Justice under the previous Attorney General. They were concerned about Mr. Olson's association with an organized and well-funded attempt to dig up dirt on the President of the United

States. They asked questions to find out what Mr. Olson did, and what he knew. It was not just a question of whether Mr. Olson did something illegal or improper. Each Senator was and is entitled to make his or her own judgment about whether Mr. Olson's involvement with the Arkansas Project, whatever it was, is relevant to his fitness to serve as Solicitor General. We were entitled to complete and forthcoming answers to the questions that were asked. We did not get them.

Mr. Olson's failure to be forthcoming in his testimony has led me to have concern about his ability to serve as Solicitor General, especially given the special duties of that office. I would not vote against him simply because of his conservative views and record. I am concerned about his fitness to be Solicitor General.

Mr. Olson testified that the Solicitor General owes the Supreme Court "absolute candor and fair dealing." I think that nominees owe Senate committees that same duty when they testify at nominations hearings. I do not think that Mr. Olson met that standard and I don't think the process surrounding this nomination has allowed Senators adequately to consider this important exercise of their duty to advise and consent. I therefore, with regret, must oppose his nomination.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Theodore Bevery Olson, of the District of Columbia, to be Solicitor General of the United States? On this question the yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Vermont (Mr. JEFFORDS) is necessarily absent.

Mr. REID. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 51, nays 47, as follows:

[Rollcall Vote No. 167 Ex.]

#### YEAS—51

Allard	Fitzgerald	Murkowski
Allen	Frist	Nelson (NE)
Bennett	Gramm	Nickles
Bond	Grassley	Roberts
Brownback	Gregg	Santorum
Bunning	Hagel	Sessions
Burns	Hatch	Shelby
Campbell	Helms	Smith (NH)
Chafee	Hutchinson	Smith (OR)
Cochran	Hutchison	Snowe
Collins	Inhofe	Specter
Craig	Kyl	Stevens
Crapo	Lott	Thomas
DeWine	Lugar	Thompson
Domenici	McCain	Thurmond
Ensign	McConnell	Voinovich
Enzi	Miller	Warner

#### NAYS—47

Akaka	Boxer	Carper
Baucus	Breaux	Cleland
Bayh	Byrd	Clinton
Biden	Cantwell	Conrad
Bingaman	Carnahan	Corzine

Daschle	Inouye	Murray
Dayton	Johnson	Nelson (FL)
Dodd	Kennedy	Reed
Dorgan	Kerry	Reid
Durbin	Kohl	Sarbanes
Edwards	Landrieu	Schumer
Feingold	Leahy	Stabenow
Feinstein	Levin	Torricelli
Graham	Lieberman	Wellstone
Harkin	Lincoln	Wyden
Hollings	Mikulski	

#### NOT VOTING—2

Jeffords	Rockefeller
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The nomination was confirmed.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent that when the next votes begin, which will be momentarily, they be 10-minute rollcalls.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, as I stated at the beginning of this debate, of course I respect the will of the Senate and the vote of every Senator.

I hope now that Mr. Olson has been confirmed as Solicitor General, he will listen very carefully to the debate and handle that position with the non-partisanship and candor the office requires. I congratulate him on his confirmation and wish him and his family well.

I yield the floor.

#### NOMINATION OF VIET D. DINH TO BE AN ASSISTANT ATTORNEY GENERAL

The PRESIDING OFFICER. Under the previous order, the clerk will report the nomination.

The legislative clerk read the nomination of Viet D. Dinh of the District of Columbia to be an Assistant Attorney General.

Mr. HATCH. Mr. President, I strongly support the nominations of Michael Chertoff to be Assistant Attorney General for the Criminal Division and Viet Dinh to be Assistant Attorney General for the Office of Policy Development.

Both nominees have outstanding qualifications. Mr. Chertoff graduated with honors from both Harvard College and Harvard Law School, then served as a law clerk for Justice Brennan of the U.S. Supreme Court. He also served as an Assistant U.S. Attorney for the Southern District of New York, and as the U.S. Attorney for the District of New Jersey. In 1994, Mr. Chertoff served as Special Counsel for the U.S. Senate Special Committee to Investigate Whitewater and Related Matters. Most recently he has worked as a partner at the prestigious law firm of Latham & Watkins, where he is national chair of the firm's white collar criminal practice. He was also appointed Special Counsel by the New Jersey Senate Judiciary Committee in its inquiry into racial profiling by state police. As his distinguished career illustrates, Mr. Chertoff is well suited to lead the Department of Justice Criminal Division—which explains why his nomination has received significant bipartisan support.

Viet Dinh is likewise eminently qualified for the position of Assistant Attorney General for the Office of Policy Development. As Mr. Dinh told us during his confirmation hearing, he came to this country from Vietnam when he was ten years old under extraordinarily difficult circumstances. He went on to graduate from Harvard College and then Harvard Law School with honors. Mr. Dinh completed two federal clerkships, one for Judge Laurence Silberman on the U.S. Court of Appeals for the D.C. Circuit, and the other for Justice Sandra Day O'Connor on the Supreme Court. He then served as Associate Special Counsel to the Senate Special Committee to Investigate Whitewater. In 1996, he became a professor at Georgetown University Law Center, where he received tenure last year. His academic writings evince a sharp legal mind and keen judgment—attributes that are essential to lead the Office of Policy Development.

Both Mr. Dinh and Mr. Chertoff have distinguished themselves with hard work and great intellect. I am confident that they will do great service to the Department of Justice and the citizens of this country, and I support their nominations wholeheartedly.

Mr. DOMENICI. Mr. President, I rise today in support of Viet Dinh, the President's nominee to be Assistant Attorney General for the Office of Policy Development. I have had the pleasure of knowing him both professionally and personally over the past several years and cannot imagine a more qualified candidate for this position.

Professor Dinh's journey began 23 years ago on a small fishing boat off the coast of Vietnam. For 12 days, the ten-year-old Viet and 84 others fought storms, hunger, and gunfire as their boat drifted in the South China Sea. Fortunately, Viet, his mother, and six siblings, reached a refugee camp after coming ashore in Malaysia. After being admitted to the United States Viet's family arrived in Oregon and later moved to California, where Viet became a U.S. citizen.

Those early years presented many challenges for Viet and his family. They had little money and worked long hours in the berry fields. Moreover, Viet's father had been incarcerated in Vietnam because of his role as a city councilman. It was not until 1983 that they were finally reunited after his father's successful escape from Vietnam.

Despite this tumultuous beginning, Dinh persevered. More than that, he excelled. Perhaps those early obstacles hardened Viet's resolve and fueled his rapid ascent through the legal profession.

Viet graduated *magna cum laude* from both Harvard College and Harvard Law School, where he was a class marshal and an Olin Research Fellow in law and economics. He served as a law clerk to Judge Laurence H. Silberman of the U.S. Court Appeals for the D.C. Circuit and to U.S. Supreme Court Justice Sandra Day O'Connor.